

October 27, 2003

REDACTED FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W., Rm. TW-A325
Washington, D.C. 20554

RECEIVED

OCT 27 2003

Attention: Wireline Competition Bureau
Telecommunications Access Policy Division

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket Nos. 96-45 and 98-171
Request for Review by SES Americom, Inc. and Americom Government
Services, Inc. of Decision of Universal Service Administrator

Dear Ms. Dortch:

I am writing on behalf of SES Americom, Inc. ("Americom") and Americom Government Services, Inc. ("AGS") (collectively, the "Filers"),¹ pursuant to Sections 54.719 through 54.724 of the Commission's rules, to appeal an August 27, 2003 decision of the Universal Service Administrative Co. ("USAC") rejecting the Filers' revised 1999-2002 Forms 499-A, submitted for the purpose of revising revenue reported from 3rd quarter 1998 through 4th quarter 2001. Certain data in this letter, and certain of the attached documents, contain proprietary and commercially secret financial information; we respectfully request confidential treatment of these materials, pursuant to Sections 0.457(d) and 0.459 of the Commission's rules. We are submitting both a confidential version of this filing, not for public inspection, and a redacted version omitting the confidential data.

In 2002, a government customer questioned the Filers' assessment of universal service surcharges against certain services provided to them. This prompted the Filers to re-analyze all services classified by it as "subject to universal service surcharges" to determine whether such charges were proper.

Upon reexamination of such services, the Filers determined that they had erroneously assessed universal service surcharges against two services that did not constitute "telecommunications" within the definition of the Telecommunications Act of 1996, as

¹ Note that the identity of one of the filers during reporting years 1999-2002 was GE American Communications, Inc. The company's name was changed from GE American Communications, Inc. to SES Americom, Inc. on November 9, 2001, following SES Global, S.A.'s acquisition of the company from indirect subsidiaries of General Electric Corp.

amended. Consequently, the original 1999-2002 Forms 499-A had incorrectly included revenue from those two services

The largest service which had been incorrectly reported was provided to the U.S. Department of Defense's Trojan program, via the Defense Information Technology Contracting Organization. Here, the customer utilized its own mobile earth stations in connection with the satellite space segment provided by the Filers, and the revenue from that non-telecommunications service was incorrectly included in Form 499-A.

For the other service, a contract with the United States Air Force Weather Service, the customer similarly utilized its own mobile earth stations. The Filers provided bare space segment under this contract. This offering did not constitute "telecommunications." However, the revenue from this non-telecommunications service was incorrectly included in Form 499-A.

The FCC has made it clear that "Satellite providers ... are not required to contribute to universal service on the basis of revenues derived from the lease of bare transponder capacity." *Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5479 (1997), *aff'd sub nom. Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000). The satellite space segment offering that the Filers provided to the government agencies falls exactly within the category of "bare transponder capacity" that the FCC said does not constitute the provision of "telecommunications" and therefore is not subject to contribution obligations. *Id.* Thus, the Filers' inclusion of revenues from those offerings in Form 499-A was erroneous.

To remedy the Filers' erroneous collection of universal service surcharges from the customers, the Filers issued a credit to the Department of Defense for the Trojan program in September 2002 for the universal service surcharges erroneously assessed against the satellite space segment service. The Filers similarly intend to refund the universal service surcharges erroneously assessed against the Air Force Weather Service offering, at the time USAC accepts the Filers' amended Forms 499-A.

The total amount of revenue over-reported by the Filers is as follows:

<u>Form 499-A</u>	<u>For Service Provided During</u>	<u>Amount</u>
1999	1998	\$[***REDACTED***]
2000	1999	\$[***REDACTED***]
2001	2000	\$[***REDACTED***]
2002 (Americom)	2001 (Americom)	\$[***REDACTED***]
2002 (AGS)	2001 (AGS)	\$[***REDACTED***]

The Filers are applying for a refund of the USAC contributions that were assessed against the erroneously-reported revenues.

D, we respectfully request confidential treatment of these documents, pursuant to Sections 0.457(d) and 0.459 of the Commission's rules.

- An affidavit of Ran Frazier, AGS' Vice President of Sales, describing the underlying facts and making it clear that the services provided to the Trojan Program and the Air Force Weather Service were not end-to-end telecommunications services. (Exhibit A)
- A spreadsheet that documents the calculation of the over-reported revenues that Filers desire to amend on Forms 499-A. (Exhibit B-1 - Confidential)
- A spreadsheet that documents the calculation of the universal service surcharges that were erroneously collected from customers. (Exhibit B-2 - Confidential)
- An affidavit of Steven Donner, Americom's Manager, Service Orders and Billing, describing the methodology used to prepare the above spreadsheets. (Exhibit C)
- Copies of the original, erroneous Forms 499-A and the corrected forms that the Filers propose to submit. (Exhibit D - Confidential)
- Copies of the USAC rejection letters. (Exhibit E)

The August 27, 2003 and September 24, 2003 letters from USAC to the Filers state that USAC is "unable to accept the revision because it was not filed within one year of the original submission." The Filers respectfully submit that the one-year deadline should not apply in this case because the corrected filing involves a *jurisdictional* matter – i.e., a matter that is beyond the jurisdiction of USAC or the FCC. Specifically, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, authorizes the FCC to impose contribution obligations only upon "telecommunications services" or "telecommunications," but not upon services that do not fall within either of these two categories. 47 U.S.C. § 254(d). But the FCC has held that the bare transponder space segment offering at issue here is not "telecommunications," which means that the FCC lacks statutory authority to require contributions based on revenues from that offering, and USAC has no authority to retain the revenues from those erroneous contributions. Accordingly, USAC's discretionary one-year limit on filing revised Forms 499-A should not apply in this case.

We look forward to your favorable response in this matter. Please do not hesitate to contact the undersigned should you have any questions.

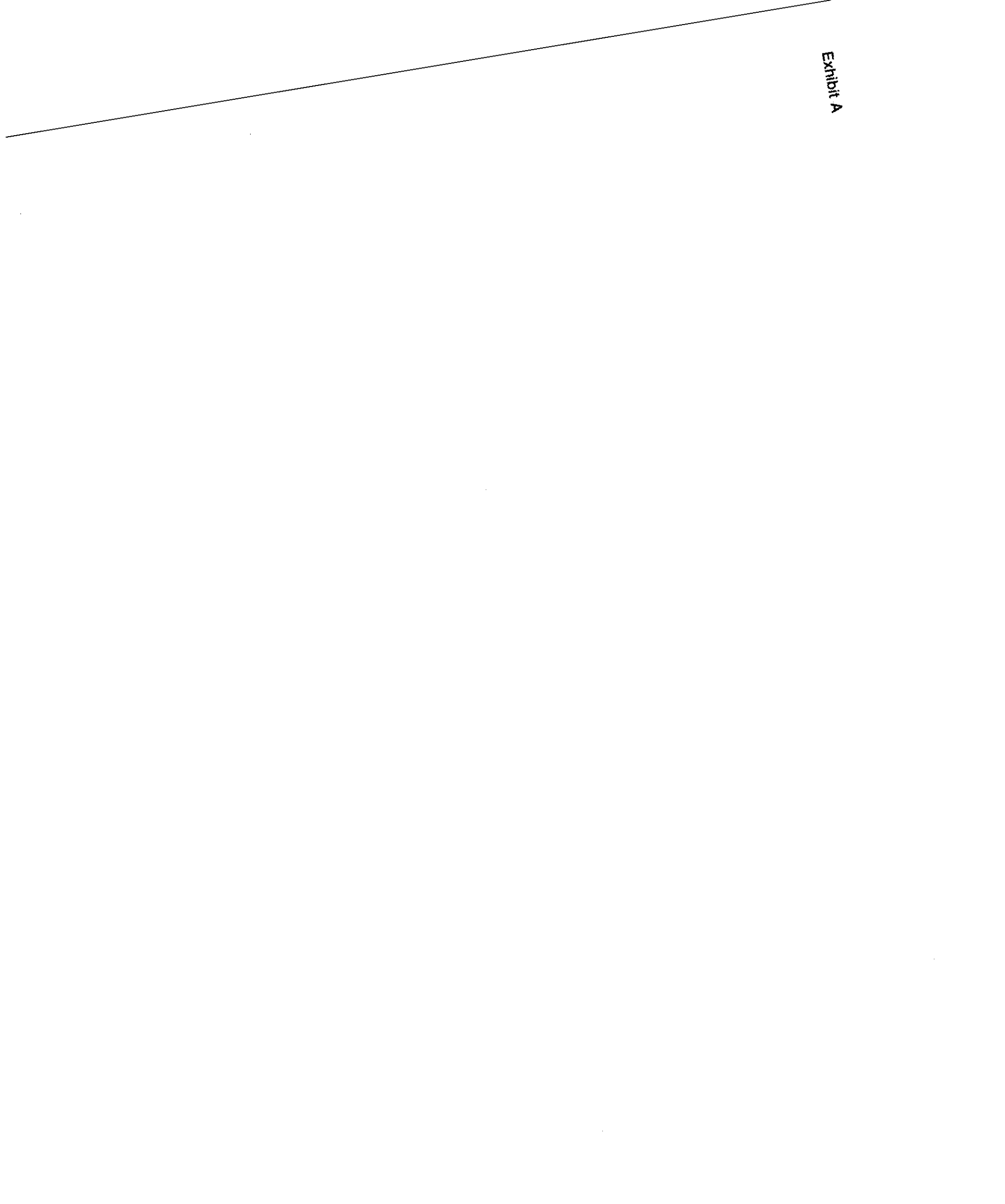
Very truly yours,



Mara Yoelson
Counsel

cc: D. Scott Barash, VP and General Counsel, Universal Service Administrative Co.

Exhibit A



AFFIDAVIT OF RAN FRAZIER

I, Ran Frazier, MAKE OATH AND SAY:

I am currently Vice President, Sales of Americom Government Services, Inc. ("AGS"). I have knowledge of this matter by virtue of the fact that I was employed by SES Americom, Inc. (f/k/a GE American Communications, Inc.) at the time the services that are the subject of this appeal were being provided by SES Americom, Inc.'s government services division, and I continued to serve as the customer representative for those services after Americom formed AGS in November 2001 and novated the services at issue to that entity.

I re-analyzed the services identified as subject to a Universal Service Charge ("USC") to determine whether those services had been properly identified. I discovered two services that should have not have been subject to USC. They are described below:

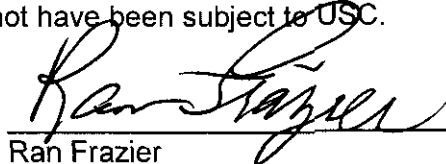
Trojan Program

1. The Trojan Program is a U.S. Army global satellite communications network.
2. The network provides for predominately data transmission with some video teleconferencing. AGS provides the space segment (i.e., satellite transponder capacity) over which the data are transmitted. AGS charges the U.S. Army a flat monthly rate for the use of this space segment – in essence, a monthly rate for providing access to the transponders on Americom's satellites.
3. In addition, AGS owns and operates an uplink hub facility (i.e., earth terminal stations) at Ft. Belvoir, Virginia. The Trojan Program's network traffic that originates at Ft. Belvoir or terminates to Ft. Belvoir is transmitted over those earth terminal stations.
4. The vast majority of the remote satellite terminals are owned and operated by the government. For those services, AGS does not provide an end-to-end telecommunications solution. Rather, our offering consists of leased capacity on the space satellite transponders and leased use of AGS' uplink hub facility. The government provides the remote downlink facilities that complete the circuits. AGS provides this offering to government customers on a non-common carrier basis. These services should have not have been subject to USC.
5. As stated in Paragraph 4 above, in a very small minority of instances, both ends of the circuit utilized AGS satellite terminals. USC were properly

applied in those cases, and therefore those revenues continue to be included in the amount subject to USC and included on the amended Forms 499-A.

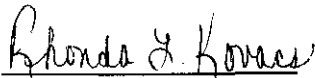
Air Force Weather Service

6. AGS provided 6.4MHz of bare space segment to the Air Force Weather Service under this contract.
7. The service did not involve any end-to-end telecommunications services and therefore should not have been subject to USC.



Ran Frazier
Vice President, Americom Government Services, Inc.

SWORN BEFORE ME 10/24/03



Notary

RHONDA L. KOVACS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 30, 2005

Exhibit B-1

[*REDACTED FOR PUBLIC INSPECTION***]**

(1 page)

Exhibit B-2

*****REDACTED FOR PUBLIC INSPECTION*****

(1 page)

AFFIDAVIT OF STEVEN DONNER

I, Steven Donner, MAKE OATH AND SAY:


I am currently Manager, Service Orders and Billing with SES Americom, Inc (together with Americom Government Services, collectively referred to as "SES"). I have knowledge of this matter by virtue of the fact that I was employed by SES Americom, Inc. (f/k/a GE American Communications, Inc.) for the past two years and helped to gather the financial data that are the subject of this appeal.

The Methodology

The process we used to determine the USAC over-reporting and overcharge is as follows:

1. During the time period in question, all universal service surcharges charged to our customers were calculated automatically by our financial system by multiplying the amount of revenue for services identified as subject to USC by the FCC's official Universal Service Contribution Factor (rounded up to the nearest 1/10th of a percentage point) in effect for the calendar quarter related to the service period. No administrative mark-up was passed to our customers.
2. We reviewed our financial records for service years 1998 – 2001 by downloading revenue and USC information from our financial systems for all services where universal service surcharges were billed to our customers. The resulting spreadsheet included the revenue reported to USAC in connection with each such customer's service.
3. All such services were analyzed by SES to determine whether universal service surcharges had been properly applied against these services, based upon the interpretation by our legal counsel as to which services constituted "telecommunications" within the definition of the Telecommunications Act of 1996, as amended ("USAC-Eligible").
4. We identified certain services that were not, in fact, USAC-Eligible. We then summarized the amount of the non-telecommunications revenues from those services that had been erroneously reported on Form 499-A and determined the amount of over-reported revenue ("Over-Reported Revenue") (Exhibit B-1).
5. The amount of universal service surcharges erroneously charged to our customers is described in Exhibit B-2.

6. We filed amended 1999-2002 Forms 499-A to reflect the revenues that should have been reported as USAC-Eligible, which we calculated by subtracting the amount of the Over-Reported Revenue from the reported revenue on the original, erroneous Forms 499-A, as computed in Exhibit B-1.

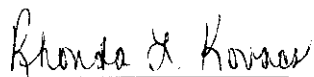


Steven Donner

Manager, Service Orders and Billing, SES Americom, Inc.

SWORN BEFORE ME

10/24/03



Notary

RHONDA L. KOVACS

NOTARY PUBLIC OF NEW JERSEY

MY COMMISSION EXPIRES MAY 30, 2005

Exhibit D

[***REDACTED FOR PUBLIC INSPECTION***]
66 PP



Universal Service Administrative Company

September 24, 2003

SES Americom, Inc.
4 Research Way
Princeton, NJ 08540-6684

Filer 499 ID: 822098

Attn: Steven Donner, MS 3-15

RE: 1999 Form 499-A Revision Rejection (no such form existed)

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by SES Americom, Inc. for the period January 1 – December 31, 1998. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission and no such form existed.

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be postmarked no later than 60 days after the date of this letter.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 499-A Rejection letter and identify the outcome that you request;
- Mail your letter to:
Letter of Appeal
USAC
2120 L Street, NW, Suite 600
Washington, DC 20037
- Appeals submitted by fax, telephone call, and e-mail will not be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

- Attach a photocopy of this Revised Form 499-A Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-A Rejection Letter, or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:
"Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4428.

Sincerely,

USAC